

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UMMEY SALMA,

Plaintiff,

-against-

NASA DEPARTMENT HEADQUARTER, *et al.*,

Defendants.

20-CV-5748 (LLS)

ORDER OF DISMISSAL

LOUIS L. STANTON, United States District Judge:

Plaintiff, appearing *pro se*, brings this action invoking the Court's diversity jurisdiction, 28 U.S.C. § 1332. By order dated August 26, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*. For the reasons set forth in this order, the Court dismisses the action for lack of subject matter jurisdiction.

STANDARD OF REVIEW

The Court must dismiss an *in forma pauperis* complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they *suggest*," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

BACKGROUND

Plaintiff brings this complaint, naming as Defendants the following entities: Auto Vehicle Department Headquarter, Drug Enforcement Department, Health Department Headquarter, NASA Department Headquarter, Natural Resources Department, Production Department Headquarter. He does not provide addresses for any of the defendants or state whether they are federal, state, or municipal entities. He does state that the events giving rise to his claims occurred between 2017 and 2018, at a location he describes as “completely satellite & tracking source.” (ECF No. 2, at 5.) As for some of the defendants’ personal involvement, Plaintiff states, verbatim:

About NASA: My confident statement, there is a strong connection between earth & solar system. [] About Auto Vehicle: 100% independent comfort challenge with using motor voltage. Its [sic] clearly consider[ed] like a theory. [] About Airway: Ozone theory existence.

(*Id.* at 7.) Plaintiff also claims that

The Antarctica was totally existenceless & full of spookyness. Only for me now it is filled out full of activities. Antarctica’s fish not only 100% edible fish also nutrition value consider like a safe booster pack. Also I showed the possibility to merchandise & exporting in safety way.

(*Id.* at 8.)

Plaintiff does not seek money damages.

DISCUSSION

The subject matter jurisdiction of the federal district courts is limited and is set forth generally in 28 U.S.C. §§ 1331 and 1332. Under these statutes, federal jurisdiction is available only when a “federal question” is presented or when plaintiff and defendant are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000. “[I]t is common ground that in our federal system of limited jurisdiction any party or the court *sua sponte*, at any stage of the proceedings, may raise the question of whether the court has subject

matter jurisdiction.” *United Food & Commercial Workers Union, Local 919, AFL-CIO v. CenterMark Prop. Meriden Square, Inc.*, 30 F.3d 298, 301 (2d Cir. 1994) (quoting *Manway Constr. Co., Inc. v. Hous. Auth. of the City of Hartford*, 711 F.2d 501, 503 (2d Cir. 1983)); see Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”); *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (“[S]ubject-matter delineations must be policed by the courts on their own initiative . . .”).

To invoke federal question jurisdiction, a plaintiff’s claims must arise “under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A case arises under federal law if the complaint “establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Bay Shore Union Free Sch. Dist. v. Kain*, 485 F.3d 730, 734-35 (2d Cir. 2007) (quoting *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 690 (2006)). Mere invocation of federal jurisdiction, without any facts demonstrating a federal law claim, does not create federal subject matter jurisdiction. See *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1188-89 (2d Cir. 1996). Plaintiff’s complaint does not involve any federal or constitutional right. The Court therefore cannot exercise federal question jurisdiction over his claims.

Plaintiff also does not allege facts demonstrating that the Court has diversity jurisdiction over this action. To establish jurisdiction under 28 U.S.C. § 1332, a plaintiff must first allege that the plaintiff and the defendant are citizens of different states. *Wis. Dep’t of Corr. v. Schacht*, 524 U.S. 381, 388 (1998). In addition, the plaintiff must allege to a “reasonable probability” that the claim is in excess of the sum or value of \$75,000.00, the statutory jurisdictional amount. See 28 U.S.C. § 1332(a); *Colavito v. N.Y. Organ Donor Network, Inc.*, 438 F.3d 214, 221 (2d Cir. 2006)

(citation and internal quotation marks omitted). Because Plaintiff does not allege that his claims satisfy this jurisdictional amount, this Court lacks diversity jurisdiction over his claims.

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123–24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988).

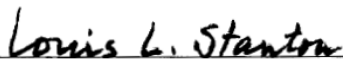
Because the defects in Plaintiff’s complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend his complaint.

CONCLUSION

Plaintiff’s complaint, filed *in forma pauperis* under 28 U.S.C. § 1915(a)(1), is dismissed for lack of subject matter jurisdiction.¹ *See* Fed. R. Civ. P. 12(h)(3).

SO ORDERED.

Dated: August 31, 2020
New York, New York



Louis L. Stanton
U.S.D.J.

¹ Plaintiff has consented to electronic service. (ECF No. 3.)